

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the matter of:

CAPISTRANO UNIFIED SCHOOL
DISTRICT,

Petitioner,

v.

STUDENT,

Respondent.

OAH CASE NO. N 2006120443

AMENDED DECISION

Administrative Law Judge (ALJ) Suzanne B. Brown, Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on May 21-23, 2007, in San Juan Capistrano, California.

Attorney Steven E. Lake represented Petitioner Capistrano Unified School District (District). Leisa Winston, Program Specialist, attended the hearing on the District's behalf.

Attorney Ellen Dowd represented the Respondent Student (Student). Student's mother attended the entire hearing, and Student's father attended most of the hearing. Throughout the hearing, a certified Spanish interpreter was present to provide interpreting services for Student's mother.

On December 13, 2006, OAH received a due process complaint (Complaint) from the District in this matter. On January 5, 2007, OAH granted the Student's unopposed request for a continuance. Following a trial setting conference (TSC) on February 9, 2007, OAH rescheduled the hearing for April 2-4, 2007. Thereafter, OAH granted another unopposed motion for a continuance, and the hearing was rescheduled to convene on May 21-23, 2007.

At the hearing on May 21-23, 2007, the ALJ received sworn testimony and documentary evidence. Upon receipt of written closing arguments on June 11, 2007, the record was closed and the matter was submitted.¹

ISSUES²

Did the District offer Student a free appropriate public education (FAPE) for the 2006-2007 school year by:

1. Conducting an appropriate assessment in all areas of suspected disability prior to the October 17, 2006 and December 5, 2006 individualized education program (IEP) meetings?
2. Offering Student a FAPE at the October 17, 2006 and December 5, 2006 IEP meetings?

FACTUAL FINDINGS

Background

1. Student is a 14-year-old boy who resides with his parents within the boundaries of the District. The parties stipulate that Student is currently eligible for special education under the category of specific learning disability (SLD).
2. Student was born in Ecuador, but he and his parents moved to southern California when he was eight years old. For his second and third grade years, he attended public school in the Poway Unified School District, where he was initially found eligible for special education under the category of Other Health Impaired (OHI) based upon diagnoses of Attention Deficit-Hyperactivity Disorder (ADHD) and Pervasive Developmental Disorder-Not Otherwise Specified (PDD-NOS). For his fourth grade year, he attended a private placement at the University of California, Irvine Child Development Center.
3. For the 2003-2004 school year, Student enrolled in the District and attended fifth grade at the District's Wagon Wheel Elementary School. In September 2003, the District conducted a psychoeducational assessment of Student and convened an IEP meeting. Also in September 2003, a behavior support plan (BSP) was agreed upon. Pursuant to his March 22, 2004 IEP, he received speech-language therapy, resource specialist program

¹ Thereafter, the parties filed motions regarding the closing briefs. The ALJ ruled on these motions in a separate order dated June 29, 2007.

² The ALJ has rephrased the hearing issues for clarity. This rephrasing does not substantively change the issues.

(RSP) services, and an occupational therapy (OT) sensory diet. At the end of the 2003-2004 school year, the IEP team convened and offered Student placement in sixth grade at the District's Las Flores Middle School (Las Flores) for the 2004-2005 school year. Among those in attendance was the principal of Las Flores, Holly Feldt.

4. Student did not attend Las Flores for the 2004-2005 school year, and instead attended sixth grade at a private school, Abiding Savior. The following school year, Student attended seventh grade in a different private school, Stoneybrooke Christian School (Stoneybrooke).

Student's Re-entry Into District

5. In the summer of 2006, Student's parents notified the District that they intended to re-enroll Student in the District. In August 2006, Student's parents signed an assessment plan to allow the District to conduct a triennial reassessment in areas such as cognitive ability, academic achievement, social-emotional functioning, behavior, OT, speech and language, vision, and hearing. The parents also consented to a referral to Orange County Health Care Agency (OCHCA) for an AB3632 mental health assessment. On September 1, 2006, the IEP team convened to determine Student's interim placement. On September 5, 2006, the school year began and Student began attending eighth grade at the District's Las Flores Middle School (Las Flores). Initially, all of his classes were general education classes, including an eighth-grade algebra class.

6. On several occasions in September 2006, District school psychologist Melissa Wilson and behavior assistant Linda Cox observed Student at different times during his school day.³ The purpose of these observations was to determine whether Student needed a BSP. Ms. Wilson also obtained feedback from Student's regular education teachers regarding Student's behaviors at school. The results of these observations indicated that Student was not off-task any more often than his eighth-grade peers and did not exhibit any particular behavioral problems. On September 21, 2006, Student's IEP team convened to review the results of these observations. Based upon the results of the observations, Ms. Wilson and other District staff recommended that Student no longer required a BSP. Student's parents did not agree with that recommendation.

7. Student's case carrier/RSP teacher, Barbara Coppola, telephoned Stoneybrooke to obtain information about Student and requested that Stoneybrooke send Student's educational records. Ms. Coppola spoke with a Stoneybrooke administrator who shared information about Student, such as Student's difficulties with math. Thereafter, the District received Student's transcripts from Stoneybrooke and learned that Student had not passed his pre-algebra class there. On or about October 10, 2006, Ms. Feldt, principal of Las Flores, spoke on the telephone with a Stoneybrooke school administrator to obtain information about Student's behavior and performance at Stoneybrooke the previous school

³ Melissa Wilson has since changed her last name to Primicias. To avoid confusion, this Decision will consistently refer to her as Ms. Wilson.

year. The Stoneybrooke administrator told Ms. Feldt that Student had had some relatively minor disciplinary incidents during the 2005-2006 school year, but that the reason Stoneybrooke had asked Student not to return the following school year was because dealing with his parents was difficult.

District's Fall 2006 Triennial Reassessment

8. Karen Riegert, a licensed occupational therapist, conducted Student's OT reassessment in September and October 2006. In her report and testimony, Ms. Riegert established that she assessed Student in all areas of suspected disability related to OT, including behavior, attention, bilateral coordination, balance, posture, eye movements, praxis/motor planning, muscle tone, auditory skills, vestibular perception, proprioception, tactile issues, sensory processing, visual-motor skills, visual perception, and fine motor skills. Ms. Riegert utilized a variety of measurement tools, such as standardized tests and checklists, review of records, interview of Student's teachers and mother, and observations of Student during testing and during different classes on different days. Ms. Riegert's standardized tests and checklists included the Educator's Checklist, the Test of Visual-Motor Skills (Upper Level), the Motor-Free Visual Perception Test-Revised (MVPT-R), the Bruininks & Osteretsky Test of Motor Proficiency, Second Edition, and the Sensory Profile – Adult/Adolescent.

9. The OT reassessment results demonstrated that Student had visual perceptual skills in the very superior range, visual-motor skills in the average range, bilateral dexterity and coordination in the above average range, and fine motor skills in the average to above average ranges, including writing and typing skills at or above grade level. Student also had typical sensory processing abilities. Student did not require a sensory diet or any other OT services, because he did not have OT needs and was able to generalize his skills across settings.

10. Lori Steiner, a licensed speech-language pathologist, assessed Student in speech and language, including articulation, fluency, voice, expressive language, receptive language, and pragmatic language. In her report and testimony, Ms. Steiner established that she assessed Student in all areas of suspected disability related to speech and language. Ms. Steiner reviewed Student's prior speech-language assessment report, and administered the Comprehensive Assessment of Spoken Language (CASL), the Test of Problem Solving (TOPS-Adolescent), and the Test of Adolescent and Adult Language (TOAL-3). Ms. Steiner also noted that Student passed his vision and hearing screenings.

11. The results of the speech-language reassessment indicated that Student demonstrated above-average language skills, with test scores ranging from the 50th percentile to the 99th percentile. Student also did not have any difficulties with articulation, voice, or fluency. Ms. Steiner concluded that Student did not have a speech or language impairment, and that instead speech and language are areas of strength for Student.

12. Ms. Wilson, a credentialed school psychologist, conducted Student's psychoeducational reassessment in September and October 2006. Ms. Wilson's testimony and report established that she assessed Student in all areas of suspected disability related to psychoeducational functioning. Ms. Wilson evaluated Student in areas including cognitive functioning, auditory perceptual skills, visual-motor integration, academic achievement, autism, social-emotional functioning, and behavior. The methods of evaluation included administration of several standardized tests and rating scales, observations of Student in various school settings on different days and times, and review of past evaluations and information gathered from Student's parents and eighth-grade teachers. Ms. Wilson also relied upon observation reports by Ms. Cox, pursuant to Factual Finding 5. Among the tests Ms. Wilson administered were the Wechsler Abbreviated Scale of Intelligence (WASI), the Woodcock-Johnson Tests of Cognitive Abilities, Third Edition (WJ-III), the Kaufman Assessment Battery for Children, Second Edition (K-ABC II), the Test of Auditory Perceptual Skills, Third Edition (TAPS-3), and the Beery-Buktenica Developmental Test of Visual-Motor Integration, Fifth Edition. Ms. Wilson also gathered information from Student's parents and teachers using the Conner's Teacher Rating Scale, the Conner's Parent Rating Scale, the Gilliam Autism Rating Scale (GARS), the Asperger Syndrome Diagnostic Scale (ASDS), and the Behavior Assessment Scales for Children, Second Edition (BASC-2). Ms. Wilson also gave Student a BASC-2 to fill out, but she did not receive the questionnaire back from Student.

13. The reassessment results indicated that Student had a deficit in his ability to quickly process information, and exhibited a significant discrepancy between cognitive ability and academic achievement in math. However, in most other areas Student demonstrated skills in the average, above average, or superior ranges, and Student's overall cognitive ability was in the superior range. Moreover, Student's teachers did not report observing any behavior problems. While Student's parents reported significant behavioral difficulties at home, Student did not manifest those problems at school, and did not have behaviors that interfered with his learning. Based upon his significant discrepancy in math, Ms. Wilson recommended that Student be found eligible under the category of specific learning disability (SLD).

14. In addition to the OT, speech-language and psychoeducational reassessments, Ms. Coppola conducted additional testing of Student's academic achievement using the WJ-III, Form B. Moreover, in anticipation of the October 17, 2006 IEP, at least four of Student's eighth-grade teachers completed "annual review" forms that reported on Student's academic and behavioral functioning.

15. Pursuant to the above findings, the District's reassessments were thorough and assessed in all areas of suspected disability. Contrary to Student's contentions, the reassessment results included extensive information regarding behavior. As noted above, several trained staff members observed Student in different settings at different times on different days. In addition to observations and testing, the triennial reassessment included gathering information about Student's behavior from his teachers and his parents. While

Student's closing brief raises various points contending that the triennial reassessment failed to assess in all areas of suspected disability, these arguments do not succeed.

October 17, 2006 IEP Team Meeting

16. On October 17, 2006, the IEP team convened to review the assessment results and determine Student's eligibility, goals, and educational placement. Student's parents attended and participated in the IEP meeting.⁴ All of the assessors who conducted Student's triennial reassessment attended the meeting. Other staff in attendance included Ms. Feldt, a program specialist, and four of Student's eighth-grade general education teachers. Although District staff invited Student to attend the meeting, he was not present because his parents did not want him to attend.

17. The IEP team members reviewed extensive information about Student, including the reassessment reports and written "annual reviews" prepared by Student's eighth-grade teachers. The District assessors reported that Student's only areas of need were in math. Other than Student's D grade in his eighth-grade algebra class, Student was performing well academically and behaviorally. The District recommended Student be determined eligible under the category of SLD due to a deficit in processing speed and a significant discrepancy between ability and achievement in math. The District recommended a mainstream placement with RSP services for 45 minutes per day, and accommodations such as extra time on math assignments and math tests. District staff also reported that they had recently received Student's records from Stoneybrooke, which indicated that Student had received a failing grade in pre-algebra. Given this information, staff indicated that Student should be transferred from his general education algebra class to a pre-algebra class.

18. Student's parents did not agree with any of the District's assessments or recommendations, and did not consent to the IEP.⁵ The parents instead requested that the District conduct an assistive technology (AT) assessment and a functional analysis assessment (FAA), and develop a BSP. District staff did not agree to these requests.⁶ However, District staff agreed to the parents' request that Student's math teacher complete the Conner's Teacher Rating Scale, which the school psychologist had already given to two of Student's other teachers. The parents also requested that the District implement Student's March 22, 2004 IEP. District staff indicated that they would do so to the extent possible, but noted that the 2004 BSP had "expired" because Student no longer manifested the BSP's listed behaviors. After approximately five hours, the IEP meeting ran out of time.

⁴ A Spanish interpreter was also present to provide interpreting services for Student's mother.

⁵ The parents also requested that the District fund independent educational evaluations (IEEs). District staff provided the parents with the paperwork about how to request and obtain IEEs.

⁶ In Student's closing brief, his parents continue to contend that Student required a BSP, but no longer argue that he required an FAA. Given that a FAA is only for students with severe behavior problems, such as self-injurious or assaultive behaviors, there is no question that Student did not meet the criteria for an FAA. (See, Cal. Code Regs., tit., 5, §§ 3001, subd. (f), 3052.)

Time Period From October 18 To December 5, 2006

19. Beginning on October 18, 2006, Student began attending the pre-algebra class co-taught by his general education math teacher, Ms. Knutsen, and an RSP teacher, Ms. Coppola, with the assistance of two classroom aides. Also at that time, District staff began implementing Student's March 22, 2004 IEP. However, because Student had changed significantly since fifth grade, he had far surpassed the March 2004 IEP goals, and no longer exhibited the behaviors targeted by his September 2003 BSP. Student repeatedly indicated to the RSP teacher, occupational therapist and speech-language pathologist that he did not want their services and did not want to be pulled out of his classes. Also during the weeks following the October 2006 IEP meeting, Student began exhibiting some behaviors at school, such as not turning in homework and not writing down his assignments on his agenda. District staff observed that Student's negative behaviors appeared to be related to his resistance to receiving the special education services pursuant to his March 2004 IEP. During this period, Student had a few disciplinary incidents, such as chewing gum in violation of school policy, which resulted in discipline in the form of detention or "bag-its," wherein a student must pick up trash items found around the campus.

December 5, 2006 IEP Meeting And Subsequent Due Process Filing

20. Student's IEP team reconvened on December 5, 2006. A psychiatrist from OCHCA presented the results from Student's mental health assessment and explained that Student did not meet the criteria for ADHD or PDD-NOS, and did not have mental health needs that impacted his ability to benefit from his education. Student's parents disagreed with the OCHCA findings. Also during the meeting, District staff proposed drafting a BSP to address the behaviors that Student had begun exhibiting, and sought the parents' consent to a behavioral assessment plan in order to create the BSP. Student's parents did not consent to the behavioral assessment plan. Additionally, District staff suggested a new behavioral goal for Student to independently fill out his agenda for homework assignments on a daily basis. The District members of the IEP team reiterated their program offer from the October 2006 IEP meeting. Student's parents did not consent to any portion of the IEP.

21. On December 13, 2006, the District filed for due process hearing in this matter. Thereafter, Student continued to attend eighth grade at Las Flores, and continued to receive related services pursuant to his March 2004 IEP.

District's Compliance With IEP Procedures

22. At least one regular education teacher of the pupil must be invited to the IEP team meeting. Student contends that the District failed to meet this requirement because it did not invite any of his former teachers from Stoneybrooke, but this argument is not persuasive. Preliminarily, there is no legal requirement that a pupil's former general education teacher be invited to the IEP meeting. In the present case, four of Student's then-current general education teachers attended and participated in the October 2006 IEP meeting. At the time of that meeting, Student had been attending Las Flores for over one

month, and his teachers had sufficient time to get to know him and form opinions about him.⁷

23. Moreover, the IEP team obtained information about Student's performance at Stoneybrooke from other sources, such as the parents, Ms. Coppola, Ms. Feldt, and Student's records from Stoneybrooke. In any event, the evidence does not support Student's contention that a Stoneybrooke teacher would have informed the IEP team that Student had significant behavior problems. Even after teaching Student for nearly the entire 2006-2007 school year, Student's Las Flores teachers did not reach that conclusion. In particular, Student's math teacher testified that Student did not have any behaviors that interfered with learning, while Student's social studies teacher testified that he has not had any reason to suspect that Student has a disability. Additionally, pursuant to Factual Finding 6, Student's behaviors do not appear to have been the cause of Stoneybrooke's decision to ask Student not to return the following school year. Hence, the composition of the IEP team did not create a procedural violation, and in any event did not impede Student's right to a FAPE, significantly impede his parents' right to participate in the IEP decision-making process, or cause a deprivation of educational benefits.

24. If the parent of a child who is an individual with exceptional needs refuses all services in the IEP after having consented to those services in the past, the local educational agency (LEA) shall file a request for due process. In the present case, the IEP notes and credible witness testimony establish that the IEP team ran out of time on October 18, 2006, and that the December 2006 meeting was a continuation of the previous meeting. Hence, the District was not obligated to file for due process immediately following the October 2006 meeting. Therefore, the timing of the District's due process filing does not constitute a procedural violation.

25. An LEA must make a clear, written offer of FAPE. In the present case, the October 2006 IEP made a clear, written offer of a mainstream placement at Las Flores with RSP services for 45 minutes per day and specified accommodations. The IEP also contained Student's measurable academic goals related to math. At the December 2006 IEP, the District reiterated the previous offer, with the addition of two behavioral goals; this IEP also constituted a clear, written offer. Contrary to Student's contentions, two minor inaccuracies on the IEPs, regarding Student's status as an English Language Learner (ELL) and the date he first entered into special education, did not make the IEPs unclear or otherwise constitute a procedural violation. Furthermore, there is no question that these minor errors did not impede Student's right to a FAPE, significantly impede his parents' right to participate in the IEP decision making process, or cause a deprivation of educational benefits.

⁷ Contrary to the arguments in Student's closing brief, the evidence did not support the theory that Student's first month at Las Flores was just a "honeymoon period."

Unique Needs/Behavioral Assessment

26. As determined above, at the time of the October 2006 IEP meeting, Student had unique educational needs in math. He was below grade level in math and required specialized instruction to receive educational benefit in that area. As determined in Factual Findings 7-12, Student did not have unique educational needs in any other areas. He had superior cognitive abilities, strong written and oral language skills, an age-appropriate attention span, and no sensory processing problems or other OT needs. He was sociable, had friends, behaved typically for an eighth-grade boy, and did not have any significant behavior problems.

27. By the time of the December 5, 2006 IEP meeting, Student had developed a few behaviors of some concern, such as failing to turn in homework and failing to fill out his agenda each day. Testimony from several knowledgeable, credible witnesses, including Ms. Coppola, Ms. Knutsen, Mr. Nagano, and Mr. Evanston, established that these behaviors were not severe. Testimony from Ms. Coppola and Karen Nelson, a program specialist, established that a behavioral assessment was warranted to evaluate what antecedents precipitated these behaviors and how to address the behaviors.

28. Student's contention that the December 2006 IEP was inappropriate due to the lack of a BSP is unpersuasive. Preliminarily, while Student would have benefited from behavioral interventions, he did not appear to need such interventions in order to receive educational benefit. In any event, testimony from Ms. Nelson and Ms. Coppola established that the District needed to conduct the behavioral assessment prior to drafting the BSP. Hence, if Student's parents wanted Student to have a BSP, they could have consented to the behavioral assessment or proposed any changes to the behavioral assessment plan.

Placement Offer

29. Considering Student's needs described herein, the October 2006 and December 2006 IEPs offered Student an appropriate program that was designed to meet his unique needs and was reasonably calculated to allow him to receive educational benefit in the least restrictive environment (LRE). The RSP math instruction offered the specialized math instruction that Student required, with individual attention available from the RSP teacher and two classroom aides. The IEP contained measurable goals targeted to Student's areas of need. There was no evidence that Student needed additional services beyond what was offered in the IEPs.

LEGAL CONCLUSIONS

Applicable Law

1. In an administrative proceeding, the burden of proof is on the petitioner. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528].)

2. Under the Individuals with Disabilities in Education Improvement Act of 2004 (IDEA) and state law, children with disabilities have the right to FAPE. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet State educational standards, and conform to the child’s IEP. (20 U.S.C. § 1401(a)(9).) “Related services” are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26).) In California, related services are called designated instruction and services (DIS), which must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd.(a).)

3. Before any action is taken with respect to the initial placement of an individual with exceptional needs, an assessment of the pupil’s educational needs shall be conducted. (Ed. Code, § 56320.) Thereafter, a reassessment shall occur at least once every three years, unless the parent and the LEA agree in writing that a reassessment is unnecessary. (Ed. Code, § 56381, subd. (a); 20 U.S.C. § 1414(a)(2)(B); 34 C.F.R. § 300.303.) The student must be assessed in all areas related to his or her suspected disability, and no single procedure may be used as the sole criterion for determining whether the student has a disability or determining an appropriate educational program for the student. (Ed. Code, § 56320, subds.(e), (f); 20 U.S.C. § 1414(b)(2); 34 C.F.R. § 300.304(b).)

4. Assessments must be conducted by individuals who are both “knowledgeable of [the student’s] disability” and “competent to perform the assessment, as determined by the school district, county office, or special education local plan area.” (Ed. Code, §§ 56320, subd. (g), 56322; see 20 U.S.C. § 1414(b)(3)(A)(iv).) Tests and assessment materials must be administered by trained personnel in conformance with the instructions provided by the producer of such tests. (Ed. Code, § 56320, subds. (a), (b); 20 U.S.C. § 1414(b)(2), (3).) A psychological assessment must be performed by a credentialed school psychologist. (Ed. Code, § 56324.) Tests and assessment materials must be validated for the specific purpose for which they are used; must be selected and administered so as not to be racially, culturally or sexually discriminatory; and must be provided and administered in the student’s primary language or other mode of communication unless this is clearly not feasible. (Ed. Code, § 56320, subd. (a); 20 U.S.C. § 1414(a)(2), (3).)

5. There are two parts to the legal analysis of whether an LEA offered a pupil a FAPE. First, the tribunal must determine whether the LEA has complied with the procedures set forth in the IDEA. (*Board of Educ. v. Rowley* (1982) 458 U.S. 176, 206-07 [73 L.Ed.2d 690].) Second, the tribunal must decide whether the IEP developed through those procedures was substantively appropriate. (*Rowley, supra*, at p. 207.)

6. Procedural errors in the IEP process do not automatically require a finding of a denial of a FAPE. (See, *W.G. v. Board of Trustees of Target Range School District No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484; *M.L. v. Federal Way Sch. Dist.* (9th Cir. 2004) 394 F.3d 634, 646.) Procedural violations may constitute a denial of FAPE only if the procedural inadequacies impeded the child’s right to a FAPE, caused a deprivation of educational

benefits, or significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of FAPE. (20 U.S.C. § 1415(f)(3)(E).)

7. Regarding substantive appropriateness under the IDEA, the Supreme Court's *Rowley* opinion determined that a student's IEP must be designed to meet the unique needs of the student, be reasonably calculated to provide the student with some educational benefit, and comport with the student's IEP. However, the Court determined that the IDEA does not require school districts to provide special education students with the best education available or to provide instruction or services that maximize a student's abilities. (*Rowley*, 458 U.S. at pp.198-200.) The Court stated that school districts are required to provide only a "basic floor of opportunity" that consists of access to specialized instructional and related services which are individually designed to provide educational benefit to the student. (*Id.* at p. 200.)

8. Federal and state laws also require a school district to provide special education in the LRE. (20 U.S.C. § 1412(a)(5)(A); *Poolaw v. Bishop* (9th Cir. 1995) 67 F.3d 830, 834.) A special education student must be educated with nondisabled peers "to the maximum extent appropriate," and may be removed from the regular education environment only when the nature or severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services "cannot be achieved satisfactorily." (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114; Ed. Code, § 56364.2, subd. (a).)

9. To determine whether the District offered Student a FAPE, the analysis must focus on the adequacy of the District's proposed program. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1314.) If the school district's program was designed to address the pupil's unique educational needs, was reasonably calculated to provide him some educational benefit, and comported with his IEP, then that district offered a FAPE, even if the student's parents preferred another program

10. The Ninth Circuit has endorsed the "snapshot" rule, explaining that the actions of the school cannot "be judged exclusively in hindsight...an IEP must take into account what was, and what was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (citing *Fuhrman v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1041).)

11. A pupil's IEP team shall include specified participants, including not less than one regular education teacher of the pupil, if the pupil is, or may be, participating in the regular education environment. (Ed. Code, § 56341, subd. (b).; 20 U.S.C. § 1414(d)(1)(B).) The purpose of the attendance of a regular education teacher is to obtain that teacher's input and participation, so that the parents and other members of the IEP team will have accurate information upon which to base a decision, and an LEA's failure to ensure this input seriously infringes on the parents' participation in the IEP team meeting. (See, *W.G. v. Board of Trustees of Target Range School District No. 23*, *supra* at 1484.)

12. An annual IEP shall contain a statement of the individual's present levels of academic achievement and functional performance, including the manner in which the disability of the individual affects his or her involvement and progress in the general education curriculum. (Ed. Code, § 56345, subd. (a)(1); 20 U.S.C. § 1414(d)(1)(A)(i).) An annual IEP must also contain a statement of measurable annual goals designed to: (1) meet the individual's needs that result from the individual's disability to enable the pupil to be involved in and make progress in the general curriculum; and (2) meet each of the pupil's other educational needs that result from the individual's disability. (Ed. Code, § 56345, subd. (a)(2); 20 U.S.C. § 1414(d)(1)(A)(iii).)

13. An IEP team must consider whether a child's behavior impedes his or her learning or that of others. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i), (b); Ed. Code, § 56341.1, subd. (b)(1).) Behaviors which impede a child's learning require the IEP team to consider and, if necessary, develop positive behavioral interventions, strategies and supports. (20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); Ed. Code, § 56341.1, subd. (b)(1).)

Determination of Issues

Did the District offer Student a free appropriate public education (FAPE) for the 2006-2007 school year by conducting an appropriate assessment in all areas of suspected disability prior to the October 17, 2006 and December 5, 2006 IEP meetings?

14. Pursuant to Factual Findings 5-15 and Legal Conclusions 1, 3, and 4, the District conducted an appropriate assessment of Student in all areas of suspected disability prior to the IEP meetings.

Did the District offer Student a free appropriate public education (FAPE) for the 2006-2007 school year by offering Student a FAPE at the October 17, 2006 and December 5, 2006 IEP meetings?

15. Pursuant to Factual Findings 16-29 and Legal Conclusions 1-2 and 5-13, the District offered Student a FAPE at the October 2006 and December 2006 IEP meetings.

ORDER

1. The District conducted an appropriate assessment of Student in all areas of suspected disability prior to the October/December 2006 IEP meetings.

2. At the October/December 2006 IEP meetings, the District offered Student a FAPE.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. The following findings are made in accordance with this statute: The District prevailed on all issues heard and decided.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within ninety (90) days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: June 29, 2007



SUZANNE B. BROWN
Administrative Law Judge
Office of Administrative Hearings
Special Education Division